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STATE FOR NEA/I  
JUSTICE FOR JOHN EULER  
NSC FOR BOB KITRINOS

E.O. 12958: N/A

TAGS: [EAID](#) [KCRM](#) [KJUS](#) [PGOV](#) [PHUM](#) [IZ](#)

SUBJECT: GOI'S LARGEST DETENTION FACILITY GETS LEGAL CLINIC

¶1. SUMMARY: A modest grant from the Ambassador's Targeted Development Program fund has given the Iraqi Bar Association (IBA) resources to operate a legal aid clinic at Baghdad's largest detention center. Many of the detainees have been held for years without charges or progress in their cases. The IBA will use the grant to pay attorneys to represent detainees, and to facilitate reintegration of detainees released from detention. Reintegration services will likely include assistance in obtaining identity and other documentation, contacting family members, and assisting in transportation to their respective homes from Baghdad. End summary.

DETAINEE SURGE  
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¶2. Despite the passage of a general amnesty law by the Council of Representatives on February 13, 2008 that was meant to include both those already convicted and those accused of certain crimes, the GOI's pre-trial detainee population has remained at pre-amnesty levels. This is due to the fact that while there have been 70 detainees that appear to have been released due to the Amnesty Program, and other releases that have occurred as part of normal trial procedure, the number of intakes has kept pace with the number of releases resulting in zero-net decrease of the population in Rusafa. The most well-known, and largest, GOI detention facility is at the Rusafa Rule of Law complex, located on the edge of Baghdad's Sadr City.

¶3. The Rusafa complex is a GOI facility meant to house approximately 2,300 pre-trial detainees. Because of the large numbers of Iraqis detained before and during surge operations in 2007, several temporary housing compounds were added to the complex. With the addition of these temporary facilities, the total bedspace capacity at Rusafa increased to nearly 7,000. While the numbers of detainees fluctuate slightly from day to day, nearly 6,500 detainees are currently held at the Rusafa complex.

LAW IS NO GUARANTEE OF REPRESENTATION  
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¶4. Due to a lack of judicial capacity and other institutional failures, the Iraqis have been unable to

process these detainees in a timely manner, and many of the detainees at Rusafa have been held for years without any change in their pre-trial status. A significant impediment to efficient movement through the judiciary process is the paucity of legal representation for the criminal detainees. Although the right to representation is guaranteed by Iraq's constitution and CPA Memorandum Three, the courts do not provide counsel to those detainees who cannot afford it.

Many of the detainees appear to have no resources, and without the provision of court-appointed representation, the possibility of finding an attorney willing to represent the detainee on a pro bono basis is limited and unlikely. With no advocate to press their case, these detainees at Rusafa ) and many others around the country ) languish for months or years.

¶15. The right to representation has been guaranteed by Iraq's constitution and reinforced by CPA Memorandum Three, since at least the fall of Saddam. Many of the detainees appear to have no resources, and without the provision of court-appointed representation, the possibility of finding an attorney willing to represent the detainee on a pro bono basis is limited. With no advocate to press their case, these detainees at Rusafa - and many others around the country - languish for months or years.

#### LAWYERS' GROUP THE ANSWER?

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¶16. In order to address the lack of experience in trial defense work (both individual and institutional), a 900,000 dollar grant from the Ambassador's Targeted Development Program (TDP) fund was awarded to establish a legal defense clinic at the Rusafa complex. The Iraqi partner for this project is the Iraqi Bar Association (IBA).

¶17. The IBA is a member-funded organization with over 40,000 eligible lawyers across the country. However, only about 10,000 lawyers are dues-paying members because of the economic conditions in Iraq. Paid membership in the IBA is mandatory in order to practice law in Iraq; however, the courts are responsible for enforcement and presently do not uniformly enforce this requirement.

¶18. The IBA enjoys a reputation as a secular organization, with no overt affiliations with any sect or faction. Approximately 15,000, or nearly 30 percent, of attorneys in Iraq are unemployed. While the legal aid clinic at Rusafa is not specifically designed as an employment program for lawyers, the IBA plans to rotate lawyers through the clinic - probably at 90 day intervals - which will have the effect of putting more lawyers to work than a fixed group for the entire period. (Note: While the President of the IBA, Mr. Aswad Minshidi, originally had hopes of very high salaries for a small number of attorneys for the legal aid clinic, the final plan calls for up to 25 attorneys at a time, drawing a combination of a base salary and a financial incentive for each completed case file. It is our understanding that even the base salaries are very attractive for the average Iraqi attorney. End note.)

#### LONG ROAD AHEAD

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¶19. Securing the release of a large number of detainees is not the primary goal of the legal aid clinic. Instead, the intent is to prod officials at Rusafa to take action on individual detainee cases, resulting in either conviction or dismissal of charges. The TDP grant to the IBA is structured to provide bonuses for case resolution, not just for representation or consultation.

¶10. According to data provided by Iraq's Higher Judicial Council, nearly 5,000 of the detainees at Rusafa have applied for amnesty under the GOI's amnesty statute. While nearly half of the applications have been approved, it is our understanding that only a handful -- mostly Shi'a -- has been released. The IBA's legal aid clinic will likely include an application for amnesty in case files for the detainees, but will also continue to represent the detainees even if the amnesty is denied.

¶11. The legal aid clinic's lawyers will provide reintegration services in the event that individuals are released, whether the release is through dismissal of charges, acquittal, or through the amnesty program. That assistance will focus on helping the former detainee safely reintegrate into society.

This may include assistance in obtaining identification documents, letters to former employers explaining the individual's situation and status, help in contacting family members across Iraq, and arranging for transportation away from the largely-Shi,a enclave where Rusafa is located.

COMMENT

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¶12. The Rusafa program is admittedly small, with modest goals. The funding provided through the TDP should prove adequate to provide legal representation and counsel for approximately 5,000 of the Rusafa detainees under the present circumstances (funding beyond that initial pool will require a policy decision as to where the means will come from to support the program - whether from USG or GOI sources). Perhaps equally as important, it provides the IBA with the resources to put a small number of Iraqi attorneys back to work. Additionally, the legal clinic is an opportunity to introduce elements of an adversarial legal system - guaranteed by Iraq's constitution -- into the country's traditionally-inquisitorial process. If the legal aid clinic achieves any of those goals, it would be worth replicating the Rusafa clinic in other locations around Iraq.

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